IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

United States of America	§	
	§	
v.	§	**Cr. Case No. 18-00039 (WES)**
	§	
Billie-Russell: Schofield	§	

AMENDED
MOTION PURSUANT TO 28 U.S.C. §455(a)
TO RECUSE THE HON. WILLIAM SMITH
with Declarations in Support

28 U.S.C. §455 requires recusal in any case "in which the judge's impartiality might reasonably be questioned", and "any close questions should be decided in favor of recusal".[1] Under the facts presented in this Motion, the recusal of The Hon. William E. Smith is not a "close question". A stay of the calendar is also requested until this Motion is adjudicated and any necessary appeal concluded.

Relevant Procedural Posture of the Case

I pled guilty on April 22, 2019 to one count of 'tax evasion' in regard to 2009. Shortly thereafter, on or about May 7, 2019, I met Mr. Robert A. McNeil a forensic accountant with over 40 years of experience working with some of the largest corporations in the Nation.

My Defense: Newly Discovered Evidence of my ACTUAL INNOCENCE

When Mr. McNeil reviewed the Individual Master File record (IMF) and other related documentation provided by the Internal Revenue Service (IRS) concerning me and 2009, he noted the standard sequence of falsified entries IRS invariably inserts into the all-controlling IMF annual records ("modules") related to targeted nontaxpayers, which are injected to justify initiating

[1] See *In re: United States*, 158 F.3d26, 30 (1st Cir. 1998)

criminal and civil prosecutions. More specifically, and as proven elsewhere,[2] IRS falsified its IMF record concerning me and 2009 to reflect 1.) its pretended receipt of a 1040A return FROM ME, (a so-called "non-filer") on "August 25, 2011", which document does not exist, and to reflect 2.) IRS' pretended preparation of a substitute 1040A income tax return on September 12, 2011. Again, no such documents exist; no such thing occurred.

That sequence of digital fraud is invariable when the Service initiates attacks on 'nontaxpayers'. It is an "institutionalized" IRS "scheme".[3],[4] I request the Court take mandatory judicial notice per FRE 201(c)(2) of the following facts easily available to the Court:

- IRS Commissioners have repeatedly, publicly conceded the income tax is voluntary,[5]

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[2] See Exh. A, sworn Declaration of Robert A. McNeil appended hereto, and see Provisional Motion to Withdraw Plea, filed contemporaneously with this Motion to Recuse.

[3] In *Hazel-Atlas Glass Co v. Hartford-Empire Co.*, 322 U.S. 772, the Supreme Court addressed the awesome injustice of attorneys perpetrating a "**scheme**" to defraud litigants and Government agencies:

> "Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford's sworn admissions, we find a deliberately planned and **carefully executed scheme to defraud**," (by attorneys/officers of the court), "not only the Patent Office but the Circuit Court of Appeals." [Emphasis added.]

[4] Per FRE 201(c)(2), I request the Court judicially notice the attached Exh. B "10 Step Program used by IRS/DoJ to Enforce the Income Tax on Nontaxpayers", with accompanying documentation. It is incorporated fully herein by reference.

[5] The Court is requested to judicially notice, per FRE 201(c)(2), these published claims by ranking IRS leaders,

-- "Each year American taxpayers voluntarily file their tax returns and make a special effort to pay the taxes they owe." Johnnie M. Walker, IRS Commissioner, 1971, Internal Revenue 1040 Booklet. And

--"Our tax system is based on individual self-assessment and voluntary compliance." Mortimer Caplin, IRS Commissioner, 1975 Internal Revenue Audit Manual. And

--"The IRS's primary task is to collect taxes under a voluntary compliance system." Jerome Kurtz, IRS Commissioner, 1980 Internal Revenue Annual Report. And

--"... Encourage and achieve the highest possible degree of voluntary compliance... " Harold M. Browning, IRS District Director, Hawaii, 1984. And

--"Let's not forget the delicate nature of the voluntary compliance tax system... " Lawrence Gibbs, IRS Commissioner, *Las Vegas Review Journal*, May 18, 1988. And

-- "We don't want to lose voluntary compliance... We don't want to lose this gem of voluntary compliance." Fred Goldberg, IRS Commissioner, *Money* magazine, April, 1990. By so stating, Goldberg confirmed the sworn 1953 testimony of Dwight E. Avis, head of the Alcohol and Tobacco Tax Division of the Bureau of the Internal Revenue before the House Ways and Means Committee of the Eighty-Third Congress:

■ IRS has repeatedly conceded that 26 U.S.C §6020(b) has no application to the income tax.[6]

IRS' all-controlling Individual Master File software was built to precisely conform to those two limitations. Hence, to enforce the voluntary income tax, IRS attorneys have authorized commission of surreptitious computer fraud to circumvent the program restrictions written into their IMF software, to generate the appearance of controversies cognizable to United States courts and to compel nontaxpayers into litigation.[7] But, since no government officer is authorized to commit crimes to enforce the law,[8] (such as by IRS' invariable falsification of records), *ipso facto*, Congress imposed no duty on nontaxpayers to file.

Standard for Recusal

A judge must decide a recusal motion by asking "how things appear to a well-informed, thoughtful observer." And "(p)ublic confidence in the courts (requires) that such a question be disposed of at the earliest possible opportunity." *In re Union Leader Corp*., 292 F.2d 381, 384 (1st Cir.), cert. denied, 368 U.S. 927, (1961). As noted above, the statutory provision requires that a judge "shall

--"Let me point this out now: Your income tax is 100 percent voluntary tax, and your liquor tax is 100 percent enforced tax. Now, the situation is as different as night and day."

[6] The authority to perform substitutes for return are discussed in IRM 5.1.11.6.7 and elsewhere, which authority is strictly limited to matters involving "**employment, excise and partnership taxes**". [Link here: http://www.irs.gov/irm/part5/irm_05-001-011r-cont01.html, scroll down to 5.1.11.6.7 "IRC 6020(b) Authority".] The Privacy Impact Assessment IRS issues concerning 6020(b) precisely confirms that limitation. [Link here: http://www.irs.gov/pub/irs-pia/auto_6020b-pia.pdf] In the Revenue Officer's Training Manual, (Unit 1, Page 23-2) IRS concedes: "The IRM restricts the broad delegation shown in figure 23-2… to employment, excise and partnership tax returns because of constitutional issues".

[7] Since IRS knows "the revenue laws are a code or system in regulation of tax assessment and collection, which relate to taxpayers and not to nontaxpayers," and that "the latter are without their scope" per *Bartell v. Riddell*, 202 F. Supp. 70 - Dist. Court, SD California 1962, IRS uses the institutionalized record falsification scheme to create the appearance of "deficiencies", thereby bringing nontaxpayers by fraud within the scope of laws applicable only to taxpayers.

[8] "The Eighteenth Amendment has not, in terms, empowered Congress to authorize anyone to violate the criminal laws of a State. And Congress has never purported to do so. The terms of appointment of federal prohibition agents do not purport to confer upon them authority to violate any criminal law. Their superior officer, the Secretary of the Treasury, has not instructed them to commit crime on behalf of the United States. It may be assumed that the Attorney General of the United States did not give any such instruction." *Olmstead v. United States*, 277 U.S. 438, Brandeis, J., dissent.

disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). In the First Circuit, "we deem it of first importance that courts must not only be, but must seem to be, free of bias or prejudice." *In re United States*, 666 F. 2d 690 - 1st Circ. 1981. Noting that the purpose of section 455(a) is to promote public confidence in the integrity of the judicial process, the Supreme Court has held that such confidence "does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew."[9] Further, the Court taught: "The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source… other than what the judge learned from his participation in the case." See *United States v. Grinnell Corp*., 384 U.S. 563 (1966).

SEVEN (7) FACTUAL ALLEGATIONS and DERIVED INFERENCES

Since a charge of partiality must be supported by a factual basis, per *United States v. Mirkin*, 649 F.2d 78, 82 (1st Cir. 1981), I present the following facts (and inferences derived therefrom) to a candid world, justifying recusal of The Hon. Judge William E. Smith.

FACT 1. Smith testified as to his personal knowledge of disputed evidentiary facts (from an extra-judicial source)

During the Zoom hearing on December 3, 2020, I requested that Mr. Smith order Mr. West, (the counsel appointed to represent me), to provide to me his explicit professional advice as to the merits of my proposed defense, which is derived (as shown above) from my discovery of IRS' systemically falsified records concerning me and 2009. As I noted to Judge Smith in the hearing, [See Hearing Transcript, Pg. 17, *et seq*.], Mr. West has NEVER provided his professional advice to me regarding both 1.) the accuracy of the evidence I have accumulated from IRS records and

[9] *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988).

presented to him, and 2.) what impact IRS' falsified records should have on the plea agreement he negotiated for me with the DoJ, or on MY CLAIM of ACTUAL INNOCENCE.

Despite the fact no evidence appears in the record showing the results of Mr. West's many-month-long supposed study of the evidence from IRS' records, and **despite my sworn claim that Mr. West has refused to share with me his complete, full professional opinion on the plausible defense I have requested he present on my behalf**, Judge Smith literally testified, contradicting me on that subject during the hearing. While George West stood mute, (as obviously agreed by the attorneys in advance), Mr. Smith testified as to the interaction between me and West, as follows:

> **B. Schofield:** There's three core issues that I've been trying to discuss with Mr. West, and I need and request his detailed, conscientious research and professional opinion regarding the merits of the defense I asked him to present. And he's refused or negated to do that. And the documents that he filed as exhibits in this motion outline the fraud that I discovered, the three core issues, and I have not received an opinion from him on any of that material. And I would ask the Court to have Mr. West render an opinion. He's been paid to represent me for the past however many years it is, and I've yet to get his opinion on any of the material that I've submitted to him. And I have no -- I did not ask Mr. West to file a motion to dismiss himself. That's the last thing that I wanted to see happen. I'm not in a position to represent myself, and Mr. West and I have had several Zoom meetings over the contents of the declaration that was filed, and I've yet to receive an opinion from him as to his findings on it. So –
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> **W.E. Smith:** "Well, frankly, I don't think that's correct. I mean, it sounds to me like you have presented a number of things to Mr. West -- theories that you have, motions that you want and so forth -- and he's told you unequivocally that he doesn't feel he can file those things. That's what I'm getting out of this."
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> **B. Schofield:** "That's not true, sir. That's not true. That's not true at all."
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> **W.E. Smith**: "Well, it's pretty clear to me that's what's going on here. I mean, I've done -- you know, this isn't my first rodeo, Mr. Schofield. I know what's going on in this case, okay, and that's what's going on. You want to present certain motions, you want to perhaps withdraw your plea of guilty, and Mr. West doesn't feel that he can do that and comply with the rules that govern practice in this court. That's what's going on, okay. Now, you're telling me he hasn't told you that. I have a hard time believing that, frankly. I think he has told you that. And it's as simple as that. I don't think it's really any more complicated." [See December 3, 2020 Hearing Transcript, Pg. 17, et seq.]

Declaration, Specific to "FACT 1.":

In response to Mr. Smith's testimony of the discussions I have had with Mr. West, outside the Court, I declare under penalty of perjury that

- George A. West stood mute during the portion of the hearing when Mr. Smith testified concerning Mr. West's refusal to fully present to me his professional advice concerning the evidence I had discovered and had presented to West for his conscientious study and use in my defense.

- During that portion of the hearing, Mr. Smith never asked Mr. West ANYTHING of his interactions with me, hence the attorneys had agreed previous to the hearing, in extra-record fashion, that Smith would testify to West's position and his communication with me, and that George West would stand mute.

- Mr. West has NEVER provided to me his full, complete professional advice, in writing or otherwise, as to 1.) the accuracy, efficacy and viability of the evidence IRS provided to me of their falsified records concerning me and 2009, or as to 2.) the impact of that fraud on my plea agreement and on MY CLAIMS OF ACTUAL INNOCENCE.

- Mr. West fabricated in his Motion to Withdraw a claimed "inability to communicate with me," which Mr. West NEVER *communicated to me.*

- Mr. West NEVER stated to me that he had a "duty to comply with the rules that govern practice in courts", **which Judge Smith fabricated** then held to supposedly preclude West from presenting a vigorous defense based on the evidence I have uncovered of the institutionalized IRS record falsification program.

- Judge Smith displayed a level of personal knowledge of my relationship with Mr. West which did NOT arise from record evidence before the Court.

- Mr. Smith did not learn from any document in the record his knowledge divulged during the hearing concerning my discussions with Mr. West and his failure/refusal to provide a full discussion of the value of the IRS record falsification program as applied to me; nor did Mr. Smith learn from any filed document any alleged "duty" West owed to the Court preventing his vigorous defense of me based on the program.

- The personal knowledge Mr. Smith revealed, concerning the relationship between Mr. West and me arose from "extra judicial sources", i.e., private conversations between Messrs. Smith and West.

- On December 17, 2020, during another remote hearing, Mr. Smith again reiterated his fabrication on behalf of the mute George West that he supposedly can't pursue the

> defense I have asked him to study and present, based on this bald claim by The Hon. William F. Smith: "He can't do that, okay? And it is unlikely you could get another lawyer to do that."

Any reasonable person, apprised of a.) Mr. West's refusal to provide me his full professional advice concerning the viability of the defense I discovered, apprised of b.) Mr. Smith's defense of the mute West's refusal to communicate with me, apprised of c,) West's fabrication of an inability to communicate with me which he NEVER told me about, apprised of c.) Judge Smith's fabrication and testimony of a claimed but unarticulated/unidentifiable duty Mr. West supposedly "owes to the court" preventing him from presenting the IRS record falsification program as justifying dismissal of this case, and apprised of d.) Mr. Smith's false testimony concerning the intercourse between Mr. West and me, would understand Mr. Smith's behavior reveals "extra judicial source" knowledge and displays a deep-seated favoritism to the Government and antagonism to me that would render his fair judgment in this case IMPOSSIBLE.

FACT 2. Judge Smith and George West are engaged in obstructing my defense

I contend that Judge Smith agreed extra-judicially with Mr. West, before the hearing on December 3, 2020, for Mr. Smith to fabricate a pretended, amorphous, undefined "duty to the court" to justify West's refusal to provide me his full professional advice as to the viability of the defense I discovered arising from IRS' institutionalized record falsification program. No such "duty" exists precluding appointed counsel from studying evidence a government agency falsified records concerning an American, or from providing his professional advice to a defendant as to the viability of that evidence, or from vigorously presenting evidence of an outrageous government scheme on a victim's behalf. Any impartial observer, watching the Honorable Judge fabricate a pretended "duty" for his mute fellow attorney, as colorable justification for the mum attorney's refusal to advise his client of the merits of a proposed plausible defense, could VERY reasonably question Mr. Smith's impartiality in this case.

Inference: Judge Smith will fabricate a "duty to file", in the teeth of overwhelming evidence.

A judge who would justify the refusal of appointed counsel to provide a lay defendant that counsel's full professional advice as to a proposed plausible defense, by colluding with the counsel to fabricate a pretended "duty to the Court" that does not exist,[10] will likely fabricate a "duty to file income tax returns". But, since IRS Commissioners claim Congress did not impose any "duty" upon nontaxpayers to file income tax returns (as proven by the evidence adduced above and by the existence of the IRS record falsification program), a reasonable person aware of Mr. Smith's fabrication of a nonexistent "duty to the court" supposedly owed by Mr. West, could infer Mr. Smith will also fabricate a nonexistent "duty to file", in defiance of overwhelming evidence that no such duty exists.

In the context of the income tax, fabrication of one "duty" by Mr. Smith, (likely leading to the presumption/fabrication of a "duty to file") displays such a deep-seated favoritism toward the Government record falsification program, and antagonism to justice, proving fair judgment in this case by Mr. Smith is IMPOSSIBLE.

Declaration in Support of this Inference

> Under penalty of perjury, and in reliance upon the public record evidence cited above from various IRS Commissioners (See Footnote 5.), from IRS internal documentation, (See Footnote 6.) and from the existence of the scheme to falsify federal records concerning me, I agree that Congress never imposed a "duty to file" anything on most Americans.

FACT 3. Mr. Smith and Mr. West are obstructing a post-conviction ineffective assistance of counsel claim.

The attorneys, led by the Hon. Judge Smith, are seeking to obstruct and preempt my ability to present a post-conviction ineffective assistance of counsel claim, after first obstructing adjudication of the evidence I discovered that IRS fabricated records concerning me to justify this

[10] Smith: "He can't do that, okay?"

prosecution.[11] Attorneys Smith and West know that, on appeal, binding precedent would require me to prove that 1.) Mr. West's refusal to defend me fell below the objective standard of reasonableness, and that I would have to prove actual prejudice resulted from his deficient work/research, i.e., that the outcome would have been different. See *Cullen v. Pinholster*, 563 U.S. 170, 2011. And both attorneys are aware that a strong presumption exists that Mr. West "acted reasonably considering all the circumstances." *Strickland v. Washington*, 466 U.S. 668, 1984.[12] Hence, Mr. Smith has already fabricated for Mr. West a colorable bar to any future ineffective assistance claim I might raise by Smith's false inference Mr. West has made all significant decisions in the exercise of reasonable professional judgment, *within the permissible range of competency*, even though West refuses to communicate with me his full, explicit advice on the evidence I have presented to him, and its impact on this case, (and even though Mr. Smith can't articulate any overriding "duty to the court" supposedly preventing West from vigorously presenting the defense I propose, based on falsified IRS records).

But, I contend that when an attorney unilaterally cuts off all communication with a defendant on a plausible defense requested by the defendant, baselessly fabricates and claims extra-judicially to a judge he is supposedly having communication problems with his 'client' with whom he refuses to communicate, refuses to provide full professional advice as the merits of a plausible defense proposed by the defendant, then colludes with the presiding judge to fabricate a pretended, but undefined, duty to comply "with the rules that govern practice before the court" [See Hearing Transcript, December 3, 2020, Pg. 16, Line 16], supposedly precluding the defense proposed, the

[11] At no time has either Mr. West, Mr. Smith, DoJ Attorney O'Donnell or DoJ Attorney Hebert even mentioned the extensively falsified IRS records concerning me and 2009.

[12] To overcome the strong presumption that counsel has acted competently, a defendant must show that counsel failed to act "reasonabl[y] considering all the circumstances," *Strickland*, at 688, and must prove the "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *id.*, at 694.

attorneys have colluded extra-judicially to create a record barring an ineffective assistance of counsel claim by their victim.

This is novel misconduct. Any reasonable person apprised of the actions of Judge Smith in this case to date, could reasonably question his impartiality, i.e., any reasonable person, apprised of Mr. Smith's efforts to subvert an ineffective assistance of counsel claim after the conviction he is engineering, could reasonably question Mr. Smith's impartiality.

FACT 4. Mr. Smith knows fabrication of evidence by a government agency (IRS) not only is a violation of my rights, it also prohibits a court from granting any relief to the agency

Mr. Smith, Mr. West, Mr. O'Donnell and Ms. Hebert are aware of this binding precedent of the First Circuit:

> "Although constitutional interpretation occasionally can prove recondite, some truths are self-evident. If any concept is fundamental to our American system of justice, it is that those charged with upholding the law are prohibited from deliberately fabricating evidence and framing individuals for crimes they did not commit. Actions taken in contravention of this prohibition necessarily violate due process (indeed, we are unsure what due process entails if not protection against deliberate framing under color of official sanction). Thus, we resist the temptation to expound needlessly upon the first element in the qualified immunity catechism and simply pronounce that requirement satisfied." *Limone v. Condon*, 372 F. 3d 39, 1st Circ. 2004.

Further,

> "All courts which have directly confronted the question agree that the deliberate manufacture of false evidence (by the Government) contravenes the Due Process Clause".[13]

Judicial agreement on the subject includes ten circuits, and none departs from the rule, stated succinctly: "Anyone who acts on behalf of the government should know that a person has a constitutional right not to be 'framed'".[14] Moreover, every involved attorney knows that government attorneys also cannot knowingly USE the fruit of falsified government records in any

[13] *Whitlock v. Brueggemann*, 682 F.3d 567, 585 (7th Cir. 2012), cert. denied 133 S.Ct. 981 (2013).
[14] *Devereaux v. Abbey*, 263 F.3d 1070, 1084 (9th Cir. 2001).

manner.[15] And, the attorneys are all aware of the Supreme Court's holding that 'fraud vitiates everything."[16]

Mr. Smith has been fully apprised of the existence of the IRS record falsification program by his extra-judicial conversations with Mr. West, as proven from his extra-judicial collusion with the silent West to fabricate a pretended "duty to the court" supposedly preventing West from presenting evidence of that program in my defense, and from Smith's concession during the December 3, 2020 hearing that he "took a quick look at" documents I wrote that West filed outlining the IRS scheme. [See Hearing Transcript, December 3, 2020, Pg. 13, Line 20] Yet, neither Mr. Smith, Mr. West, Mr. O'Donnell nor Ms. Hebert have EVER MENTIONED IRS THE PROGRAM ON THE RECORD, and clearly Mr. Smith will never adjudicate it if he can avoid it, as he telegraphed in his recent hearings.

Declaration, Specific to **FACT 4**:

Judge Smith is requested to take judicial notice of the following facts and evidence:

IRS falsified digital and paper records concerning me to fabricate the appearance I supposedly owe a deficiency to the Treasury, which I do not owe, absent the falsified IRS records.[17] Specifically, I contend under oath that IRS framed me by falsifying federal digital and paper records to reflect 1.) its pretended receipt of a return FROM ME concerning 2009 on August 25, 2011, which does not exist, and to reflect 2.) IRS' pretended preparation of a substitute 1040A income tax return on September 12, 2011. No such documents exist; no such thing occurred.[18] And Mr. West has stated Ms. Hebert will confirm those manipulations of the IMF record concerning me.

[15] *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920), Holmes, J., and see 18 U.S.C. §1001.
[16] *U.S. v Throckmorton*, 98 U.S. 61 (1878).
[17] See "Ten Step Program….", Exh. B, for general details of the program.
[18] For evidence, see Exh. A, sworn Declaration of Robert A. McNeil appended hereto, and to Provisional Motion to Withdraw Plea, filed contemporaneously with this Rule 455 Motion to Recuse.

George A. West is fully aware of the program, has communicated it to Mr. Smith, and is colluding to obstruct adjudication of the program/scheme.

FACT 5. Mr. Smith KNOWS, or should have known, Mr. O'Donnell and Ms. Hebert are knowingly using the fruit of falsified IRS records to continue this prosecution

The DoJ's failure to reveal to me and to the indicting grand jury the exculpatory evidence of the existence of the IRS record falsification program, is "outrageous government misconduct" sufficient to justify withdrawing my plea, and to dismiss this case. Tax Division head PDAAG Richard Zuckerman is aware the IRS record falsification program exists,[19] yet relentlessly conceals it and uses its fruit. And, incredibly, he explicitly counsels his prosecutors to prevent IMF records from entering cases in criminal trials,[20]even though they contain exculpatory evidence.

Zuckerman surrogates Hebert and O'Donnell had a duty to learn of the underlying record falsification scheme even if they claim personal ignorance.[21] Hebert and O'Donnell are imputed by law to know that the IRS systematically falsified digital records concerning me, and paper

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[19] The AG appeared and filed documents in each of the following Class cases complaining of the IRS record falsification program: 14-0471 *Ellis v. Commissioner, et al;* 15-1288 *McNeil v. Commissioner, et al;* 15-2039 *DePolo v. Ciraolo-Klepper, et al;* 16-0420 *Dwaileebe v. Martineau, et al;* 16-1053 *Crumpacker v. Ciraolo-Klepper, et al;* 16-1384 *Morris v. McMonagle, et al;* 16-1458 *McGarvin v. McMonagle, et al;* 16-1768 *Podgorny v. McMonagle, et al;* 16-2089 *DeOrio v. Ciraolo-Klepper, et al and* 17-00034 *Ford v. Ciraolo-Klepper, et al.*

[20] Incredibly, in the DoJ's 2001 Criminal Tax Manual, **Section 40.03[9][c]** the Agency directly instructs United States prosecuting attorneys to avoid entering the (falsified) IMF records into evidence in court hearings. Instead, the DoJ explicitly advises prosecutors to substitute IRS' so-called "self-authenticating" (and also falsified) certificates concerning the IMF records, when cases go to trial:

> "Admissibility of IRS Computer Records. The introduction of the actual Individual Master File (IMF) transcript of account through a witness can open the witness to cross-examination by the defense about every code and piece of information contained in the transcript. **In order to avoid this problem**, **it may be wiser to simply offer IRS computer records at trial in the form of Certificates of Assessments and Payments, certified documents reflecting tax information kept on file at the IRS."** [Emphasis added.]
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> Link here: https://www.justice.gov/sites/default/files/tax/legacy/2006/02/28/40ctax.pdf

As shown in the attached Exh. A Declaration of forensic accountant Robert A. McNeil, the IRS also created falsified Certificates concerning me and 2009, in addition to falsifying its digital records.

[21] See *US v. Andrews*, 532 F. 3d 900- Court of Appeals, D.C. Circuit 2008: "Hence, to comply with *Brady*, the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case.' *In re Sealed Case*, 185 F.3d at 892,Court of Appeals, D.C. Circuit 1999 (quoting *Kyles v. Whitley*, 514 U.S. 419, 437).

certifications based thereon,[22] and had a duty to disclose the exculpatory evidence of the existence of the institutionalized IRS record falsification scheme to defendants (and grand juries) in criminal trials.[23] But AUSAs Hebert and O'Donnell did NOT provide to me, or to the Court, or to the grand jury indicting me, the evidence I only discovered post-plea, which proves that the IRS fabricated falsified IMF records and certifications concerning me, as the IRS does to justify instigating criminal prosecutions of all "non-filers" accused of income tax crimes.

Messrs. Smith and West are aware of the failure/refusal of the involved AUSAs to present to the indicting grand jury, to me and to the Court evidence of the existence of the IRS program from which this case arose. By refusing to present that evidence, the attorneys are committing an ongoing violation of *Brady v. Maryland,* (373 U.S. 83) in the face of this Court. Further,

> "Attorney fraud calls into question the integrity of the judiciary and erodes public confident in the fairness of our system of justice. Accordingly, where an attorney embarks on a scheme to … **intentionally conceal documents**, extrinsic fraud constituting a fraud upon the court occurs." *Chewning v. Ford Motion Co*., 354 S.C. 72, 2003.[24]

So, Mr. Smith KNOWS, or should have known, that Mr. O'Donnell and Ms. Hebert are committing ongoing Brady violations, (and are likely personally liable for their misconduct).[25] Again, any woman or man of good will, apprised of Mr. Smith's conduct in this case favoring, shielding and prolonging the executive branch record falsification program being used against me,

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[22] *See United States v. Beers*, 189 F.3d 1297, 1304 (10th Cir.1999) "Information possessed by other branches of the government, including investigating officers, is typically imputed to the prosecutors of the case". *United States v. Jennings*, 960 F.2d 1488, 1490 (9th Cir. 1992) ("[t]his personal responsibility cannot be evaded by claiming lack of control over the files … of other executive branch agencies").

[23] Thus, a defendant's due process right to a fair trial is violated when any Government actor or agent withholds material evidence favorable to the defendant, irrespective of any knowledge on behalf of the prosecuting attorney. *See United States v. Beasley*, 575 F.2d 626, 632 (5th Cir. 1978) ("The duty of disclosure affects not only the prosecutor, but the Government as a whole, including its investigative agencies.").

[24] If I could discover it, the government attorneys should have; and since I have presented it, Mr. Smith should have at least feigned interest.

[25] See *Limone v. Condon*, 372 F. 3d 39, (2004).

could reasonably question his impartiality.

FACT 6. In the last hearing, Mr. Smith telegraphed to the candid world he will vindictively sentence me to 45 years in prison if I attempt to withdraw my plea, even though it was unwittingly based on falsified federal records created by and used by the Government.

I have respectfully requested Mr. West present to me and to the Court his detailed, full professional opinion as to the defense I discovered. But to undercut my request to West, Mr. Smith held that the mute West has some unidentified, unidentifiable duty compelling him to refrain from providing his professional advice concerning the accuracy of the evidence I discovered, and the applicability of the IRS record falsification program to MY CLAIM OF ABSOLUTE INNOCENCE. Specifically, in the most recent hearings on December 3rd and on December 17th, 2020, Mr. Smith ignored every request I made seeking affirmation of the validity of the defense I have discovered, as discussed partially between me and my counsel, and that it be vigorously presented for adjudication. But in fact, that defense remains unmentioned in the record by Mr. West, Mr. Smith, Mr. O'Donnell and Ms. Hebert. Further, Mr. Smith telegraphed to the Government attorneys and all concerned that if I withdraw my plea and proceed with the defense I seek to raise, he will agree to imprison me for 45+ years.

Any reasonable person apprised of the facts that I have been threatened by Judge Smith with a ten-fold increase in prison sentence if I withdraw my plea and seek adjudication of the record falsification program from which this prosecution arose, after having been stripped of counsel by agreement of Messrs. Smith & West, and having never received any advice from Mr. West regarding the falsification of IRS records concerning me, could reasonably conclude that such threat draws into question yet again Mr. Smith's impartiality. The vindictive sentence he has instructed the attorneys to seek, is yet another reason to question his impartiality in this case.

Fact 7. By Colluding with executive branch attorneys, Mr. Smith is warring against the principal of separation of powers and the judicial integrity rationale.

> "Courts are to be considered as the bulwarks of a limited Constitution against legislative encroachments." So, "[L]iberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments… notwithstanding a nominal and apparent separation." Federal Papers, No. 78, Hamilton.

As shown above, Mr. Smith appears to impartial observers to be obstructing adjudication of the executive branch record falsification program from which this case arose. He appears to be bringing to

> "the point of extinction the vital function… that the judiciary avoid even the slightest appearance of sanctioning illegal government conduct. This rejection of 'the imperative of judicial integrity,' *Elkins v. United States,* 364 U. S. 222 (1960), openly invites "[t]he conviction that all government is staffed by . . . hypocrites[, a conviction] easy to instill and difficult to erase."[26] When judges appear to become "accomplices in the willful disobedience of a Constitution they are sworn to uphold," *Elkins v. United States, supra* at 364 U. S. 223, we imperil the very foundation of our people's trust in their Government on which our (republic) rests. *See On Lee v. United States,* 343 U. S. 758-759 (1952) (Frankfurter, J., dissenting)

By refusing to even mention, let alone adjudicate the existence of the falsified executive branch records upon which this case is based, Mr. Smith is sawing off the very branch on which he sits. He must recuse.

Relief Requested

As an initial matter, I request the Court notice I am filing contemporaneously with this Motion a Motion for Temporary Appointment of EFFECTIVE Counsel to advise me as to the useability and impact on this case of the record falsification program revealed by IRS' digital and paper records concerning me and 2009.

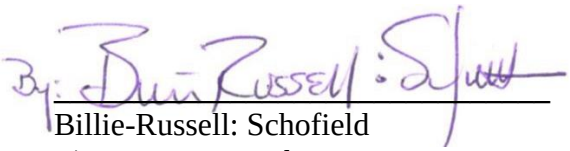
Next, I move the Court to rule on this motion prefatory to any others I file by the December 24, 2020 deadline Mr. Smith imposed for filing of motions, since this recusal motion should be

[26] The Exclusionary Rule and Misconduct by the Police, Paulson, 52 J.Crim.L.C. & P.S. 255, 258 (1961).

adjudicated first by Mr. Smith. Then, should Mr. Smith improperly deny this motion, I request a stay to allow necessary appeal to the First Circuit.

Finally, based on the FACTS, inferences derived from those facts, and the sworn Declarations appended hereto, I move the Hon. Judge William E. Smith to recuse himself post-haste from this case.

Respectfully presented,



Billie-Russell: Schofield
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Phone: 508-287-3880

CERTIFICATE of SERVICE

I certify that on December 24, 2020, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system. I further certify that a copy of the foregoing document(s) was [hand delivered or mailed via U.S. Mail or other carrier] to the person(s) listed below. This is to certify that a copy of the foregoing **"AMENDED MOTION PURSUANT TO 28 U.S.C. §455(a) TO RECUSE THE HON. WILLIAM SMITH with Declarations in Support"** was served via United States Mail on or about December 24, 2020 to:

Mr. William P. Barr
United States Attorney General
Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Mr. Richard E. Zuckerman
Deputy Assistant Attorney General
Tax Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530
Billie-Russell: Schofield

By: Billie Russell : Schofield
Billie-Russell: Schofield